



National Indian Gaming Commission

**Preventing Gamesmanship on the
Backs of Tribes**

**OTGRA
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IGRA

Enacted by Congress in 1988

25 U.S.C. §§ 2701 - 2721



IGRA Purposes

Provide a statutory basis for the operation of gaming by tribes to promote:

- tribal economic development
- self-sufficiency, and
- strong tribal governments.

Provide a statutory basis for the regulation of gaming by a tribe that is adequate to:

- shield it from corrupting influences;
- ensure tribe is the primary beneficiary of the gaming; and
- gaming is fair and honest by the operator and the player.



Gamesmanship

1. Non-tribal government interest
2. Manipulates Tribal business relationships associated with Indian gaming operations in furtherance their own interests
3. Undue influence over the tribal decision making process (as can be the case when the gamesmanship is facilitated by trusted tribal advisors)
4. At the expense of the tribal gaming operation and, therefore, the tribe and its citizens
5. Violates IGRA or NIGC regulations, Tribal Gaming Ordinances and other federal, state or tribal laws



Gamesmanship Violations under IGRA

- Under IGRA, Gamesmanship violations are enumerated as:
 - Managing an Indian gaming operation without an approved management contract,
 - A violation of the sole proprietary interest requirement,
 - Misuse of gaming revenue.
- Both the Tribe and a non-Tribal government party may be in violation of IGRA, NIGC regulations, and Tribal Gaming Ordinances.
- Gamesmanship violations may be a substantial violation of IGRA that can result in a closure order or civil fine assessment of up to a maximum of \$50,000 a day.



Management Contracts in IGRA

- 25 U.S.C. § 2711
 - Chairman is required to:
 - Collect substantial identifying information on contractor, including detailed financial information
 - Conduct a background investigation on the contractor
 - Specific terms required for approval:
 - Reimbursement caps, minimum guaranteed payments, and term limits, etc.
 - Unapproved Management Contracts are void

See 25 C.F.R. Parts 531, 533, 535 537



NIGC Bulletin 94-5

- Any agreement can be management if it authorizes management activity.
- Provides distinctions between Consultant Agreements and Management Contracts
- Optional Contract Review by Office of General Counsel.



Management Without An Approved Contract

- Managing without an approved contract is a substantial violation of IGRA that can result in a closure order or civil fine assessment (up to a maximum of \$50,000 a day).
- Both the Tribe and the third party may be in violation of IGRA and NIGC regulations when this occurs.

See 25 C.F.R. § 575.4



Misuse of Gaming Revenue

- Violation of IGRA and NIGC regulations
- Five specific purposes
- When used for some other purpose, can result in a Notice of Violation



Sole Proprietary Interest

- Every approved tribal gaming ordinance must provide that the tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity.

See 25 U.S.C. § 2710(b)(2)(A)



Evaluating Proprietary Interest

- The term of the relationship between the tribe and the third party;
- The amount of revenue paid to the third-party; and
- The third party's right of control over the gaming activity.



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How Do Tribes Guard Against Gamesmanship

Tom Cunningham
OKC Region Office
Compliance Division



Know Your Authority

- Tribal Gaming Ordinance
- Indian Gaming Regulatory Act
- Gaming Regulations
- Policy



Know Your Authority

- What are all of the authorities provided to the TGRA within the approved gaming ordinance?
- What level of access does the ordinance provide related to contracts and agreements?
- What are your regulations regarding licensing of vendors and 3rd parties?



Know Where to Look

- Contracts
 - Review
- Daily Activity
 - Observe
- Payments
 - Audit/Test



Know What to Look For

Red Flags

- Unapproved Management Contracts
- Sole Proprietary Interest
- Misuse of Gaming Revenue



Know How it Happens

- Lack of Awareness
- Good Intentions/Few Options
- Pressure
- Collusion



Who Knows

- Negotiator
- Contractor
- Author(s) of the contract
- CFO
- Check signatory
- Accounting Department
- Department receiving the service



Be Proactive

- Awareness
- Promulgate policies and regulations
- Enforce and train existing policies and regulations
- Research/Training
- Educate vendors during licensing
- Request and review the contracts
- Consider Ethics and Conflict of Interest policies for decision makers



Addressing Gamesmanship

- Document and Report
- Investigate
- Expand the Scope
- Take Action



Teaming With NIGC

- OGC will review unexecuted agreements
- Compliance will review executed agreements
- Resources
- Training
- Expand the scope to other jurisdictions



Desired Outcome

- Stop the violation
- Amend or void agreements
- Return management control to the tribe and/or ensure the tribe is the sole beneficiary
- Promulgate controls to prevent reoccurrence
- May result in a criminal referral



What to Expect from NIGC

- Identifying Gamesmanship is an agency priority and NIGC Compliance Officers may:
 - Ask questions related to Gamesmanship during site visits
 - Review contracts on site
 - Request copies of contracts, payment records and other associated documents
 - Visit with operations staff about 3rd party services and activities



Questions?

- Please reach out to the Division of Compliance or the Office of General Counsel if you have any questions.

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